ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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NOV 13 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	WC Docket No. 02-317
Verizon Telephone Companies	)	
Tariff FCC Nos 1, 11, 14, and 16	)	

MOTION FOR ACCEPTANCE OF OPPOSITION TO DIRECT CASE

US LEC Corp; Level 3 Communications, LLC; Focal Communications Corporation; Pac-West Telecomm, Inc.; Business Telecom, Inc.; ATX Communications, Inc.; DSLnet Communications, LLC; U.S. TelePacific Corp. d/b/a TelePacific Communications; and Freedom Ring Communications, LLC d/b/a BayRing Communications (collectively "CLEC Commenters"), by their undersigned counsel and pursuant to section 1.46(b) of the Commission's Rules, 47 C.F.R. § 1.46(b), respectfully requests that the Commission accept as timely filed the enclosed Opposition to Direct Case, which was electronically filed with the Secretary's Office via e-mail yesterday in the above-captioned proceeding.

The deadline for filing oppositions to the direct case in this proceeding was yesterday, November 12, 2002.[1] CLEC Commenters intended to electronically file their Opposition through the Commission's Electronic Comment Filing System ("ECFS"), as recommended by the FCC in *Designation Order* issued in this case.[2] When Counsel for the CLEC Commenters attempted to electronically file the Opposition in ECFS, Counsel discovered that the Commission was experiencing technical difficulties and, as such, the system was temporarily out of service for repair. Unfortunately, by the time Counsel became aware of these technical problems, the FCC's delivery center was no longer open to accept paper filings. Out of an abundance of

1 *The Verizon Telephone Companies, Tariff FCC Nos 1, 11, 14, and 16, Transmittal No. 226*. Order, DA 02-2522 (rel. Oct. 7, 2002) ("Designation Order").

2 *See id.* at ¶35.

caution, Counsel electronically filed the Opposition by e-niailing the Opposition to an e-mail address for the Office of the Sccrctary designated for electronic filing.[3] A copy of this electronic filing, as well as a copy of the return receipt confirmation message from the Secretary's Office. are included herewith as ***Attachment I*** to this Motion.

Due to the emergency nature of the circumstances, CLEC Commenters respectfully request that the Commission accept as timely filed their Opposition to the Direct Case that was electronically filed with the FCC yesterday via e-mail. CLEC Commenters would have electronically tiled their Opposition using the ECFS ycstcrday if it **were** available. However, due to technical difficulties beyond the control of the CLEC Commenters, the system was unavailable for use in yesterday's filing and, as such. CLEC Commenters diligently submitted their tiling via other electronic tiling means.

Moreover, CLEC Commenters submit that it is in the public interest to make the record in this proceeding as complete as possible and acceptance of this filing as timely filed will not prejudice any party. Wherefore, to ensure that the interests of competitive telecommunications carriers are represented, CLEC Commenters respectfully rcquest that the Commission accept their Opposition to Direct Case submitted herein into the record of this proceeding and consider the Opposition as part of this case.

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3 *See FCC Announces the Implementation of Interim Electronic Filing and Refiling Procedures for Certain Commission Filings Due to the Recent Disruption of Mail Delivery*, News Release (rel. Nov. 29, 2001).

Respectfully submitted,

Wendy M. Creeden

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Freedom Ring Communications, LLC d/b/a
BayRing Communications

Dated: November 13, 2002

ATTACHMENT 1

Greenan, Kathleen

From: OTHERS OtherSecretary [OtherSecretary@fcc.gov]
Sent: Tuesday, November 12, 2002 10:06 PM
To: KLGreenan@SWIDLAW.com
Subject: Re: WC Docket No. 02-317; Opposition to Verizon Direct Case

The Office of the Secretary has received your email

Greenan, Kathleen

From: Greenan, Kathleen
Sent: Tuesday, November 12, 2002 10:07 PM
To: 'ccbsecretary@fcc.gov'; 'othersecretary@fcc.gov'
CC: 'qualexint@aol.com'
Subject: WC Docket No. 02-317; Opposition to Verizon Direct Case

Due to the inability to file the attached Opposition through the Internet, I respectfully requ st that the attache oppos :ion be accepted via electronic mail delivery.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Kathleen Greenan Ramsey
Swidler Berlin Shereff Friedman, LLP
phone (202) 945-6922
fax (202) 424-7645

Opposition to Verizon Direct C...

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**WC Docket** No. 02-317
Verizon Telephone Companies	)	
Tariff FCC Nos. 1, 11, 14, and 16	)	

OPPOSITION TO DIRECT CASE

US LEC CORP.,
LEVEL 3 COMMUNICATIONS, LLC,
FOCAL COMMUNICATIONS CORPORATION,
PAC-WEST TELECOMM, INC.,
BUSINESS TELECOM, INC.,
ATX COMMUNICATIONS, INC.,
DSLnet COMMUNICATIONS, LLC,
U.S. TELEPACIFIC CORP. d/b/a TELEPACIFIC COMMUNICATIONS, AND
FREEDOM RING COMMUNICATIONS, LLC d/b/a BAYRING COMMUNICATIONS

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Their Counsel

Dated: November 12.2002

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SUMMARY

Verizon's proposed revisions to its interstate access tariff would impose onerous, unjust, and unreasonable requirements on its carrier customers and should be rejected. Under the price cap plan adopted in 1990, Verizon is adequately protected from losses from non-payment. In addition, Verizon has agreed to assume additional risk in exchange for obtaining pricing flexibility for special access and dedicated transport services. Moreover, ARMIS data indicates that the risk of losses from non-payment has not increased substantially since passage of the 'Telecommunications Act of 1996. The **Bell** operating companies' uncollectibles as a percentage of total operating revenues have remained nearly constant, and Verizon's figures are consistent with those of other carriers. In addition, Verizon has seen steady increases in its rate-of-return so any increases in uncollectibles have been matched by increases in profitability. Where price caps do not apply to Verizon, Verizon already charges grossly excessive rates for special access, and additional security is unnecessary.

Verizon's losses that have prompted its tariff proposal are isolated to a handful of large cases. Verizon is adequately protected already from losses from non-payment by the remaining carriers. New security deposit requirements would have an enormously disparate impact on CLECs *for* the marginal benefit of putting Verizon in **a** position to protect a very small portion of its revenues. The anticompetitive implications of imposing additional burdens on CLECs are significant.

Verizon is also unable to defend its deposit refund proposal. If Verizon is permitted to adopt its security deposit provisions, Verizon should be required to refund any security deposits as soon as its periodic risk review indicates a carrier is credit worthy. Moreover, the existing

criteria of timeliness of customer payments of undisputed amounts are the most reliable indicators of a carrier's creditworthiness.

With regard to Verizon's proposal to shorten the notice periods for terminating service, imposing an embargo, and demanding payment of a security deposit or advance payment, Verizon fails to respond to even the most basic Commission inquiry. Verizon does not explain why its security deposit and advance payment provisions are alone insufficient to protect Verizon and require shortened notice periods as well. Instead, Verizon provides vague, unsupported reasons as to why customers do not need 30 days notice. Verizon's reasoning is flawed and the information provided **is** inadequate and non-responsive to the Commission's inquiries. It is clear from reviewing Verizon's Direct Case that Verizon has no basis for requesting shortened notice periods. Verizon appears to be requesting shortened notice periods for the sole purpose to harass and to harm its competitors. **As** detailed below, Verizon has failed to prove its case. The proposed shortened notice periods are clearly unjust and unreasonable and, therefore, unlawful

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OPPOSITION TO DIRECT CASE

US LEC Corp.; Level 3 Communications, LLC; Focal Communications Corporation; Pac-West Telecomm, Inc.; Business Telecom, Inc.; ATX Communications, Inc.; DSLnet Communications, LLC; U.S. TelePacific Corp. d/b/a TelePacific Communications, and Freedom Ring Communications, LLC d/b/a BayRing Communications (collectively "CLEC Commenters"), hereby oppose the Direct Case filed by the Verizon Telephone Companies ("Verizon") on October 29,2002.[1] Verizon seeks to change the criteria under which it may demand security deposits from carriers that purchase interstate services to protect Verizon from loss in the event that the money owed for such services becomes uncollectible. Verizon's request should be denied because Verizon is adequately protected and already has authority to demand deposits, the risk of loss has not significantly changed, and the price cap regime established by the Commission in 1990, for the benefit of Verizon, addresses the risk of loss from lion-payment for services. Nothing in the Direct Case provides evidence to the contrary.

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[1] CLEC Commenters also oppose the substantially similar tariff revisions proposed by BellSouth and SBC, and have commented, or will comment, in those proceedings accordingly. *See Ameritech Operating Companies Tariff FCC No. 2, Transmittal Nu. 1312, et al.*, Order, WC Docket No. 02-319, DA 02-2577 (rel. Oct. 10,2002); *BellSouth Telecommunications, Inc Tariff FCC No. 1, Transmittal No. 657*, Order, WC Docket No. 02-304 (rel. Sep. 18,2002).

I. THE PRICE CAP REGIME COVERS VERIZON'S RISK OF UNCOLLECTIBLES

In the Designation Order, the Commission instructed Verizon to "explain why it believes its rates under price caps do not adequately compensate it for the risk of uncollectibles."[2] Verizon was also asked to explain "whether the variation in uncollectible levels for 2000 and 2001 is merely a normal fluctuation in uncollectibles, which would be covered by the business risks anticipated to be endogenous to price caps[.]"[3] Verizon has not adequately explained either point

The price cap regulatory regime established by the Commission in 1990 was intended to move away from cost-based rate-of-return regulation and provide incumbent local exchange carriers ("ILECs") with incentives to reduce costs and increase efficiencies.[4] The federal price cap regime began with the interstate rates effective in 1990 that were based on the approved rate base, and applied a "productivity factor" to ratchet interstate rates down over time. These initial interstate rates reflected both uncollectibles and security deposits from customers. Over ILEC objections, the Commission specifically stated that customer deposits would be included, and any interest owed to customers for their deposits would be included as operating expenses.[5] Likewise, uncollectibles are included within a carrier's reported revenue in order to determine

2 *The Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14, and 16. Transmittal No. 226,* Order, DA 02-2522 (rel. Oct. 7, 2002) ("Designation Order") at ¶ 12.

3 *Id*

4 "Previous orders in this docket have contained lengthy discussions of the tendency of rate of return regulation to produce inefficiencies, as documented by various scholars. . . Our own experience with administering a rate of return system convinces us that carriers in fact attribute unnecessary costs to their operations in an effort to generate more revenue." *Policy and Rules Concerning Rates for Dominant Carriers,* Second Report and Order, 5 FCC Rcd 6786 (1990) at ¶ 29 *("Price Cap Order").*

5 *Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers,* Report and Order, 3 FCC Rcd 269 (1987), on recon., 4 FCC Rcd 1697 (1989) at ¶ 58.

whether a rate-of-return carrier is earning its prescribed rate of return.[6] Verizon acknowledges that uncollectibles were included in its rate base that determined its initial price cap rates.’ Verizon has demonstrated no reason to vary from the parameters of the price cap regime for endogenous costs. Verizon bases its request on the level of risk of non-payment that it claims has increased since the Telecom Act of 1996.[8] Verizon’s request should be denied because risk of potential loss is included within the price cap regime and Verizon has waived its rights to protection from risk under the price cap regime.

A. Risk of Potential Loss is Included Within the Price Cap Regime

The price cap regime recognizes that price cap ILECs may lose money that would put them at risk of under-earnings. Under the price cap regime as originally implemented, ILECs were given the opportunity to earn profits well above the prescribed rate of return, while also heing protected from earning profits below **a** certain threshold, initially set at 10.25%.[9] The reason given by the Commission to protect a price cap ILEC from low earnings was that “[u]nusually low earnings over a prolonged period could threaten the LEC’s ability to raise the capital necessary to provide modern, efficient services to customers.”[10] While the Commission recognized in 1990 that its “lower end adjustment mechanism” protects LECs from management errors and misjudgments, it was intended to protect ILECs “from events beyond their control that arc likely to affect earnings to an extraordinary degree, such as local or regional recessions.”” In other words. relief from the price cap regime was available to price cap ILECs that experienced “extraordinary” reductions in earnings or “unusually low earnings over **a** prolonged

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See 47 C.F.R. § 32.4999(m) (“Uncollectible revenues shall include amounts originally credited **to** the revenue accounts which **have** proved impracticable of collection.”).

7 Direct Case **at** 12.

8 *Id*

Price Cap Order at ¶ 165.

period." **As** explained below, Verizon has seen significant and sustained *increases* in earnings under price caps. Verizon simply has no claim for relief under its price cap regime.

Verizon asserts that the level of uncollectibles factored into its price cap rates "are extremely out of date."[12] Whether this statement is true or not, the overriding purpose of the price cap regime was to eliminate consideration of the carrier's costs.[13] Whether Verizon's costs have increased significantly, or have decreased significantly, the Commission made the determination in 1990 that, absent compelling circumstances, such changes would not warrant Commission review. Instead, the Commission decided to look only at the carrier's rates, which would be adjusted annually to reflect both inflation and increases in productivity within the telecom sector. The Commission identified compelling circumstances as extraordinary reductions in earnings or unusually low earnings over a prolonged period of time. Neither of those circumstances are present here, There simply is no basis for Verizon to seek revisions under the price cap regime for an increase in one particular type of costs endogenous to the price caps.

Verizon asserts that the Commission's question whether Verizon is adequately compensated under its price cap regime is based on a faulty premise.[14] To Verizon, that premise is "so long as Verizon is able to recover some or all of its expenses related to carrier bad debt, it should be precluded from amending its tariffs to try to prevent such bad debt from occurring."[15] The premise is not faulty, however, because Verizon already has tariff provisions to prevent such bad debt from occurring. Further amendments are not necessary. Moreover, as explained

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10 *Id* at ¶ 147.
11 *Id.*
12 Direct Case at 12.
13 ***Price** Cup **Order*** **at** ¶¶ 34-35.
14 Direct Case at **A-S.**

above, all of Verizon's expenses — including uncollectibles — were factored into Verizon's price cap rates. Unless Verizon is willing to have all of its expenses re-examined to determine more appropriate price cap rates, Verizon should not be allowed to pick-and-choose which expenses it deems significant enough to warrant special treatment.

In fact, Verizon had such an opportunity to re-initialize its price cap rates as recently as 2000, and Verizon elected not to take advantage of the opportunity. In the *CALLS* ***Order,*** the Commission gave Verizon the choice to submit the cost studies necessary to determine more accurate interstate rates, or base the rate changes under the *CALLS* ***Order*** regime on its existing price cap rates.“ Verizon chose the latter option. This was an important decision by Verizon because, as demonstrated by Exhibit 2, Verizon's uncollectibles in 2000 **were** more than twice as high as they were in 1990. Nonetheless, Verizon's level of uncollectibles were not significant enough at that time to prompt Verizon to seek to re-initialize its rates.

Moreover, there are much better ways for Verizon "to try to prevent such bad debt from occurring." First, it could honor its obligations under the Telecom Act and actually consider taking a more cooperative position with CLECs. The Commission must consider how Verizon's own conduct with respect to its wholesale customers has contributed to their financial difficulties. If, through its conduct in provisioning wholesale services, Verizon has impaired a competitor's ability to compete, or provided services in such a manner that discourages customers from switching away from Verizon, or engaged in other anticompetitive conduct, Verizon has only itself to blame for **a** risk in the increase in uncollectibles. It should come as no

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15 *Id.*

16 *Access Charge* **Reform; Price Cap *Performance* Review** *for Local Exchange* **Carriers; Sixth** *Report* and Order. *Low-Volume Long-Disrance Users*, **Report** and Order, *Federal-State Joint Board* **on** *Universal Service*, Eleventh Report and Order, 15 FCC Rcd 12962 **(2000)**, *aff'd in part, rev'd in part,* ***and remanded in part***, *Texas Office of Public Util. Counsel et al.* **v.** *FCC*, **265** F.3d 313 (5th Cir. 2001) ***("CALLS Order")*** **at ¶ 57.**

surprise to Verizon that its anticompetitive conduct could eventually render carriers insolvent or unable to pay their bills. Verizon comes to the Commission as if these business failures were occurring in a vacuum and Verizon had no involvement in the CLECs' troubles.

B. Verizon Has Waived Its Right to An Adjustment Due to Reduced Earnings

Verizon contends that "the adjustment set in price cap rates assumes that ILECs will be facing the same 'business risks' as the rest of the general economy."" Unless Verizon is permitted to implement the same protections against risks as non-regulated firms, Verizon contends, Verizon will be subject to business risks not faced by the rest of the general economy." To the contrary, until recently, under the price cap regime Verizon was *protected* from the business risks in the rest of the general economy. Under the price cap regime, Verizon was guaranteed a minimum rate of return in order to ensure that Verizon would always be able to provide telephone service

Verizon waived its right to a guaranteed rate of return, however, and assumed additional risk of loss when it elected to receive pricing flexibility for its interstate access services. In the 1999 *Pricing Flexibility* Order, the Commission required price cap LECs to waive the "lower end adjustment mechanism" that guaranteed a 10.25% rate-of-return if they were granted pricing flexibility under the Commission's new rules." The waiver was holding-company-wide when an ILEC received pricing flexibility for even a single MSA.[20] Verizon has been granted pricing flexibility for interstate exchange access services, and thus has waived its guaranteed rate-of-

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17 Direct Case at A-10.

18 *Id.* at A-11.

19 *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) ***("Pricing Flexibility* Order")** at ¶¶ 160-168.

20 *Id.* at ¶ 167.

return.[21] Verizon assumed additional risk of loss in exchange for the opportunity to earn additional profits through pricing flexibility. By seeking permission to increase its customers' deposit requirements. Verizon is effectively seeking a modification of its price cap regime to further reduce its risk of losses from non-payment. Verizon has waived that right, and it should not be allowed to invoke it now.

Not only has Verizon willingly assumed additional risk of loss, it has benefited by being granted additional opportunity for profit under price caps. The original price cap regime required Verizon to "share" profits it earned in excess of a fixed rate of return with its ratepayers.[22] The sharing mechanism was implemented so that "consumers receive their fair share of productivity gains that occur, just as they would in an industry with keener competition."[23] The Commission, however, eliminated that sharing requirement in 1997 in order to increase ILEC incentives to reduce costs and improve efficiency, rather than game the system by misallocating costs from unregulated services.[24] Verizon wants it both ways, of course. It wants the ability to earn increased profits on regulated interstate services, but it also wants additional protection from possible losses as well.

Further, despite Verizon's claims to the contrary, the Bell operating company ("BOC") level of non-payment has remained remarkably steady, even following the Telecom Act of 1996. ARMIS data available from the Commission indicates that, on average, uncollectibles as a percentage of total operating revenues for the BOCs have remained nearly constant at 0.52%.[25]

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[21] *Verizon Petitions for Pricing Flexibility for Special Access and Dedicaled Transport Services*, Memorandum Opinion and Order, 16 FCC Rcd 5876 (2001).

[22] *Price Cap Order* at ¶¶ 124-125

[23] *Id.* at ¶ 124.

[24] *Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform*, Fourth Report and Order. 12 FCC Rcd 16642 (1997), *rev'd in part, aff'd in parr, United States Telecom Ass'n v. FCC*, 188 F.3d 521 (D.C. Cir. 1999) at ¶ 148.

[25] See Exhibits 1, 2. The ARMIS data for GTE is included.

For Verixon alone, the figure has seen more variability but it averages 0.58%. The outlier data point for the year 2001 must be considered an anomaly, and certainly not a trend: the years 1996-2000 retlected percentages of 0.54%, 0.56%, 0.46%, 0.52%, and 0.52%, respectively, for all BOCs. Over the same period, Verizon saw a ***reduction*** in its rate of uncollectibles since passage of the Telecom Act: Verizon's rate of uncollectibles as a percentage of total operating revenues was 0.64% in 1995. but only 0.58% in 2000. Until Verizon demonstrates a trend heyond those attributable to the recent downturn in the telecommunications industry, Verizon's current concerns must be considered temporary.

Further, whatever additional risk Verizon is currently experiencing must be considered in the context of Verizon's total financial position. Price cap regulation has been very, very good for the BOCs. The ARMIS data indicates that the Verizon and the other BOCs have enjoyed almost steady increases in total operating revenues from interstate operations (net of uncollectibles) since price cap regulation began in 1991. In addition, the average rate-of-return for Verizon and the BOCs for interstate services has increased steadily over the period. Even as uncollectibles rose, the BOC rate-of-return rose just as fast. The average rate-of-return for all BOCs for the period was 15.2%, and Verizon's average rate of return for interstate services over the same period was 14.4%. For each of the past three years, Verizon's rate of return for interstate services has exceeded 17%.

Even if BOCs' uncollectibles have increased recently, it would be inappropriate for the Commission to consider uncollectibles independently of other pricing factors applicable to Verizon under its price cap plan. The Commission has generally looked at a carrier's overall rate-of-return to determine the effectiveness of a price cap plan, and Verizon is clearly doing very well in that regard. The evidence simply does not demonstrate any hardship imposed on the BOCs as a result of an increase in uncollectibles.

II. WHERE PRICE CAPS NO LONGER APPLY, VERIZON DOES NOT NEED SECURITY DEPOSITS

In service areas where Verizon has obtained special access and dedicated transport pricing flexibility, price caps no longer apply for those services. In those areas, Verizon may charge whatever it wants to charge, and may adjust its rates to include a premium to account for risk As AT&T points out in its October 15, 2002 Petition for Rulemaking, Verizon's special access rates in areas in which it has obtained pricing flexibility are grossly excessive, and Vcrizon is gouging its captive special access customers.[26] According to AT&T's review of Verizon's ARMIS data, Verizon's special access revenues in 2001 exceeded the just and reasonable rate of return set at the beginning of price caps by more than $1 billion.[27] It is inconceivable that rates with such a significant rate of return do not adequately protect Verizon from the risk of loss from non-payment. While Verizon proposes to alter its security deposit provisions "to restore a balance in the LEC-customer relationship,"[28] Verizon fails to offer to restore a balance in the LEC-customer relationship in the purchase of special access services from Verizon under its pricing flexibility provisions

[26] *AT&T Corp. **Petition for Rulemaking** To **Reform Regulation Of Incumbent** Local **Exchange** **Carrier Rates For Interstate Special** Access **Services***, **filed** October 15,2002, **at** 3.
[27] *Id* at 8.
[28] Direct Case at 14.

111. VERIZON'S LOSSES ARE ISOLATED, BUT ITS PROPOSED SOLUTION IS NOT

Verizon proposes to impose increased security deposit requirements on carriers that have never established a record of failure to pay. The Verizon proposal would almost certainly apply to many carriers that will never default on their payments to Verizon. The Verizon proposal will impose a burden on these carriers that is completely unjustified. Verizon's own data demonstrates that **a** small handful of carriers are causing a disproportionate amount of the losses, yet Verizon's proposal is a dragnet and over-inclusive.

Responding to Verizon's Direct Case has been made more difficult by Verizon filing the information related to carrier defaults as Confidential Information. The Commission should note that both BellSouth and SBC have submitted substantially similar information, but have not sought confidential treatment for it. Nevertheless, it should suffice to say that, like BellSouth, Vcrizon's uncollectibles are attributable to a small number of carriers. Of those carriers that have defaulted in their payments to Verizon, a few large amounts dominate the total amount of uncollectibles.

Obviously, this issue of possible non-payment or delayed payment is the consequence of a few enormous defaults, and it is not attributable to the CLEC or IXC industry generally. The solution proposed by Verizon would not be focused on these isolated losses, but would be overextended to every carrier that was deemed to be a credit risk by Verizon. Moreover, the fact that only a few carriers represent the great majority of Verizon's uncollectibles casts considerable doubt on the assumption that Verizon is not adequately protected through its current security deposit system for the remaining defaulting carriers.

Moreover, **all** telecommunications carriers are experiencing an increase in uncollectibles. US LEC, for example, adjusted its doubtful-accounts reserve **by** $9.5 million to reflect potential losses from the WorldCom bankruptcy.[29] Interconnection of networks means that carriers are doing business with each other, in addition to doing business with the BOCs. Simply because Verizon is much larger than the carriers with which it interconnects does not necessarily mean that Verizon incurs greater risk of non-payment than those carriers. In fact, Verizon has enjoyed added protection from risk ofnon-payment even though its level of non-payment is enviable compared to competitive firms.

Consider, for example, the fact that CLECs have no ability to demand security deposits from Verizon, even though Verizon frequently owes significant amounts of money to them, repeatedly refuses to make payment, and has an extremely poor record of making timely payments. Unless Verizon can demonstrate that it would not be required to submit deposits to CLECs under its own timely payment standard, it should not be allowed to subject CLECs to a subjective assessment of creditworthiness. Verizon's "unclean hands" in this matter alone warrants rejection of its proposed tariff revisions.

In addition, Verizon proposes to obtain additional deposits from the same carrier customers that are trying to compete with Verizon in the market and that depend on services provided by Verizon to serve their own customers. By demanding additional deposits, Verizon would be in the position to exacerbate the cash flow problems of its competitors that may also be experiencing an increase in uncollectibles. Given that uncollectibles represent about one-half of one percent of total operating revenues for Verizon and the other BOCs, the Commission should recognize the enormously disparate impact Verizon' deposit requirements will have on CLECs. As the Commission stated in its Designation Order, "an approach that has the fewest adverse

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29 US LEC Corp., Form 10-Q, "Results of Operations" (Aug. 14, *2002)*

effects on the competitive market while protecting Verizon's interests would be preferred."[30] In order to provide marginally more security to Verizon to protect a very small portion of revenues, Verizon's proposal would burden CLECs that are in no position to either submit cash deposits to Verizon in order to obtain essential facilities and services, or encumber assets by securing letters of credit or other collateral arrangements.

What must be considered in connection with Verizon's proposal is that Verizon has existed in a monopoly environment in which it has historically enjoyed little risk of losses from non-payment overall. Unless Verizon can demonstrate that firms in competitive markets have similar levels of security from non-payment, Verizon has to be considered adequately protected from non-payment already. Verizon has not provided that information. and its proposed tariff revisions should he rejected.

IV. VERIZON IS UNABLE TO DEFEND ITS DEPOSIT REFUND PROPOSAL

The Designation Order asked Verizon to explain "why it should not include provisions that provide it will periodically review the need for a security deposit[.]"[31] Verizon's response was that "by requiring Verizon to pay customers high rates of interest on security deposit balances, the tariff provisions provide incentives . . . to return the deposits promptly when they are no longer needed."[32] If Verizon recognizes that it already has economic incentives to return customer deposits, it should have no resistance to committing to return a customer deposit as soon as the conditions prompting the deposit requirement no longer exist. Further, considering

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30 Designation Order at ¶ 16.
31 Designation Order **at** ¶ 30.
32 Direct Case at C-1

that Verizon "conduct[s] periodic review to determine whether deposits are required,"[33] it should agree to conduct periodic review on the same timeframes to determine whether deposits are no longer required. Such periodic review would appear to be financially prudent for Verizon in order to avoid having to pay customers "above-market interest rates" for security deposits. Verizon has provided no evidence that such a routine would not be financially prudent. By making this commitment to return customer deposits without prompting by the customer, Verizon would help to negate concerns that Verizon was intentionally withholding undeserved security deposits in order to inflict harm on its wholesale customers. Finally, Verizon has agreed to pay interest on deposits at the annual rate of 18.25%, and this is the basis for its position that it has an economic incentive to return customer deposits promptly.[34] This rate of interest paid on customer deposits should be adopted in all of Verizon's tariffs.[35]

V. THE EXISTING CUSTOMER DEPOSIT CRITERIA ARE SUFFICIENT

Verizon proposes to establish additional criteria to determine whether it will demand a security deposit from a wholesale customer. Currently, a carrier's history of past payment is the criteria to determine whether Verizon's **risk** of non-payment has increased. Verizon **seeks** to supplement that criteria by other measures, including a carrier's rating for its senior debt securities. **As** an initial matter, Verizon admits that "a customer's past payment history is still a

33 *Id.*

34 Direct Case at A-28 ("Pursuant to the *tariffs*, Verizon must pay significant interest at 18.25% to the customer on security deposits.") (emphasis added).

35 Verizon's tariffs are not consistent with each other. ***Compare*** Verizon Tariff FCC No. 11, Original Page 2-30.2, referring to Original Page 2-35 (Verizon pays "the highest interest rate (in decimal value) which may be levied by law for commercial transactions... or 0.0005 per day [*i.e.*, 18.25% annually]") *to* Verizon Tariff FCC No. 1, Original Page 2-29 (Verizon pays "the highest interest rate (in decimal value) which may be levied by law for commercial transactions... or 0.00024657 per day [*i.e.*, 9.00% annually]") *and* Verizon Tariff FCC No. 16, Original Page 2-14.1 (Verizon pays only 12% interest) *and* Verizon Tariff FCC No. 14, Original Page 2-1 1.2 (Verizon pays interest pursuant to General and/or Local Tariff).

good predictor of a future payment."[36] Nevertheless, Verizon opposes using payment history alone as the criteria for creditworthiness because Verizon would actually have to wait until a carrier defaulted before it could demand a security deposit.[37] The weakness of this argument is self-evident. If a carrier has not yet defaulted, it has not breached its agreement with Verizon for non-payment and there is no uncollectible problem for Verizon. The carrier clearly has an incentive not to default on its payments to Verizon because then it would also owe an onerous security deposit. The factual or reasonable measure of a company's ability to make future payments is its history of making past payments. Unless a company demonstrates a failure to make timely payments, there should be no reason to anticipate default by the company in the future. Payment history is objective and simple to determine. The additional criteria proposed by Verizon are not necessary."

VI. SHORTENED NOTICE PERIODS ARE UNJUST AND UNREASONABLE AND IN VIOLATION OF SECTION 201 OF THE COMMUNICATIONS ACT

Verizon's proposal to provide customers only 7 days notice of service termination or service embargo and only 10 days notice to comply with a demand for a security deposit or advance payment is unjust and unreasonable under section 201 of the Act and, therefore, unlawful. Section 201 of the Communications Act provides that "[a]ll charges, practices, classifications. and regulations for and in connection with such communications service, shall be just and reasonable. and any such charge, practice, classification, and regulation that is unjust or

[36] Direct Case at 6.
[37] *Id.*
[38] Additional criteria are also unnecessary because of the significant amount of switched and special access services that arc billed in advance. thereby reducing Verizon's risk of loss significantly. ***See*** Direct Case at **A-19.**

unreasonable is hereby declared unlawful.""[39] As described in the Commenters' Petition to Reject,[40] it is impossible for customers to provision replacement services in such a short period of time, if they are available at all. Verizon's defense that "the notice typically is triggered by Verizon only after it and the customer have been involved in protracted negotiation" is meaningless. There is nothing on the face of the tariff that commits Verizon to such negotiations or ensures that Verizon cannot summarily terminate these negotiations by producing an unexpected termination notice.

In an effort to provide Verizon an opportunity to demonstrate that its proposed shortened notice periods are reasonable and just, the Commission set forth a series of inquiries for Verizon to respond. Verizon fails to respond to even the most basic Commission inquiry. Verizon does not explain why its security deposit and advance payment provisions are alone insufficient to protect Verizon and require shortened notice periods as well. While Verizon ignores this basic Commission inquiry, Verizon does *make* an attempt, albeit a pitiful one, to explain why it needs shortened notice periods (not in addition to the deposits, but in general). Its reasoning is flawed and the information provided is inadequate and non-responsive to the Commission's inquiries. It is clear from reviewing Verizon's Direct Case that Verizon has no basis for requesting shortened notice periods. Verizon appears to be requesting shortened notice periods for the sole purpose to harass and to harm its competitors. As detailed below, Verizon has failed to prove its case.

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[39] 47 U.S.C. § 201(b)

[40] *Verizon Telephone Companies Tariff F.C.C. Nos. 1, 11, 14, and 16*, Petition to Reject or Suspend and Investigate Proposed Tariff Revisions by Association of Communications Enterprises, Freedom Ring Communications, L.L.C. d/b/a BayRing Communications, Business Telecom. Inc., DSL.net, Inc., ATX Communications, Inc., CTC Communications Corp., Focal Communications Corp., Level 3 Communications, LLC,

A. Verizon Fails to Demonstrate a Need for a Shortened Notice Period

It is impossible for Verizon to demonstrate a need for a shortened notice period. It is clear. through Verizon's Direct Case, that Verizon does not even use its 30-day notice. Verizon states that it "almost never sends notice of termination nor embargo to a customer on the first day that it is entitled to send such a notice."[41] The shortened notice period cannot be substantiated by any data or example where 7 days would have made a difference for Verizon in its collection efforts. Verizon asks for relief when Verizon has not made a case that the current 30-day notice period is not sufficient. Until Verizon makes use of its 30-day notice period, it is impossible to determine whether Verizon requires a shorter notice period at the expense of its customers and end users. It is a fair assumption that when Verizon wants to employ its right to terminate service, it wants a shortened notice period to intimidate its customer to pay.

In response to the Commission's request for an explanation as to why Verizon believes a shortened notice period is necessary,[42] Verizon makes vague reference to recent events, "typical" negotiation processes, other carrier tariffs, occasional mandatory wait periods, and the time frame from a customer's receipt of service to the payment of a bill. None of these factors support Verizon's cause. To the contrary, they demonstrate the uncertainty of the relationship between Verizon and its customer and the immense leverage Verizon has over its customer. As described in Commenters' Petition to Reject, and incorporated herein by reference, customers often have legitimate disputes with Verizon's invoices.[43] Verizon uses its leverage to force payment in these circumstances.

PaeTec Communications, Inc., Pac-West Telecomm. Inc., US LEC Corp. (filed Aug. 1, 2002) ("Petition to Reject").

41 Direct Case at 22.

42 Designation Order at ¶ 10.

43 Petition to Reject at 4.

Verizon claims a need for a shortened notice period due to circumstances that "change very quickly (as demonstrated by recent events, including the WorldCom bankruptcy)."[44] Verizon provides nothing more, failing to elaborate on what it considers to be "recent events." Instead, Verizon simply cites to the WorldCom bankruptcy. Even if the Commission were to accept such a vague response, Verizon fails to explain how its proposed 7-day notice period would improve its collection abilities in circumstances such as the WorldCom case. It appears that Verizon never even sent a 30-day termination notice to WorldCom, so its unclear how a 7-day notice, as opposed to the current 30-day notice, would have helped Verizon.

Moreover, if bankruptcy filings are the "recent events" that support Verizon's proposed shortened notice period, such support is wholly inadequate. Once a carrier files for bankruptcy, it is under the protection of the United States Bankruptcy Code. Section 366(b) of the Code provides that a utility, such as Verizon, may alter, refuse, or discontinue service *if* the debtor, within 20 days of the order for relief (*i.e.*, the petition date under the Bankruptcy Code), fails to provide the utility with adequate assurance of payment in the form of a deposit or other security for services. Thus, once a carrier files for bankruptcy protection, Verizon must provide service for at least twenty (20) days. In addition, subject to the provisions of Section 366 of the Bankruptcy Code, a utility may not alter, refuse, or discontinue service to, or discriminate against. the carrier-debtor. Thus, Verizon must remove any embargo and process all carrier service orders. Although it is unclear what Verizon means by "recent events," since it only cited to the WorldCom bankruptcy case, one is forced to analyze the proposed shortened notice period in such a context. For the reasons described above and set forth in Commenters' Opposition to

44 Direct Case at 20-21

Verizon's Emergency Petition:' Verizon's proposed 7-day notice period would be ineffectual in these circumstances. So it is unclear how Verizon's shortened notice period will assist, or would have assisted, Verizon during these recent events.

In a further attempt to support its need for a shortened notice period, Verizon refers to a "lengthy process" prior to sending a termination or embargo notice to a customer.[46] Verizon provides no description and no examples of the process; nor does Verizon identify the time frame for this process. Verizon's reference to this process demonstrates that (a) more than 7 days are needed for Verizon and carrier-customers to work out any differences and/or prepare for termination of service and (b) Verizon does not intend to always give its customers more than 7 days. Verizon's constant use of the terms "almost always," "usually," "often," and "typically" mean that Verizon does *not* always engage in the lengthy process and failure to detail such process in its tariff means it will not guarantee such discussion. Instead, Verizon wants to discriminate among carriers by picking and choosing those carriers it will talk to and those it wishes to shut down,

Similar to the negotiation process, the "mandatory wait periods" referred to by Verizon are not guaranteed to apply to all customers. Without citing to any specific examples of such wait periods, Verizon claims that there are "often" requirements to wait until bills are overdue prior to sending out a termination notice. Without more information, it is impossible to know what these wait periods are and what affect they will have on a customer.

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[45] *Petition for Emergency Declaratory or Other Relief*, Opposition of CTC Communications Corp., DSL.net, Inc., Focal Communications Corp., Level 3 Communications, LLC, Pac-West Telecomm, Inc., US LEC Corp., WC Dkt. 02-202 (filed Aug. 15, 2002). Incorporated herein by reference.
[46] Direct Case at 21.

Verizon also refers to the notice periods found in other carrier tariffs to support its "need" to have the shortened notice period.[47] It is important to recognize the differences between the carriers cited and Verizon. These other carriers are not incumbent carriers. They work with their customers to avoid losing wholesale service customers. Moreover, customers have other alternatives for service, where, in the case of Verizon, there is no other alternative. Thus, the reference to other carrier tariffs is ineffectual and does not support Verizon's case.

B. With a Shortened Notice Period, Verizon's Absolute Right to Determine the Termination of a Customer's Service is Strengthened

Throughout its Direct Case, Verizon refers to a lengthy negotiation process, which allegedly occurs prior to the release of a termination or embargo notice. Verizon does not offer the option for a lengthy negotiation process to each customer. Instead, Verizon, in some unknown fashion, picks the customers entitled to negotiate billing issues with Verizon. This practice is discriminatory on its face and, therefore, illegal

Moreover, due to the absence of the negotiation process in Verizon's tariff, Verizon retains for itself the absolute right to determine the process, if any, by which service will be terminated or new services embargoed without any independent supervision from or concurrence by the Commission. affected parties or an independent, disinterested third party. Such unchecked power held by a competitor, which already has overwhelming market power, is absolutely unacceptable, Put simply, Verizon is entitled to no such authority. With its vague negotiation process in tow, Verizon claims the right to reduce dramatically the notice period without supervision or oversight either by its customer or a third party, and to terminate service solely on its own, unattested conclusions. Put bluntly, Verizon's competitors have every reason to distrust Verizon's good will in engaging its so-called "lengthy" negotiations.

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47 *Id.*

A tariff is supposed to give the public, and the Commission, notice regarding the terms and conditions under which a customer can receive service. Such terms and conditions are supposed to also give notice to a customer of the rights and process for payment, resolving disputes and termination of service. Based on its Direct Case, it is clear that Verizon's tariff proposal fails to do that

C. Verizon Fails to Produce Requested Information

The Commission directed Verizon to submit information for the most recent twelve months as to the timeliness of its billings. Verizon only produced information for one month, the month of October 2002.[48] Verizon claims all months in the prior year are *consistent* with October 2002; not the same, but consistent. Verizon provides no excuse for failing *to* submit information on each of the twelve months, as requested by the Commission.

D. Verizon Fails to Support its Request to Avoid the 3-day Requirement

While admitting that it cannot comply with a 3-day requirement to release customer bills, Verizon requests boldly that it be permitted to forgo the 3-day requirement and still impose on customers a 7-day notice requirement. Based on the figures for October 2002, the only figures provided by Verizon and likely a month of best efforts by the Verizon team, Verizon *sends* the bill within 10 days or within ***3*** or 4 days of the *bill date* depending on the method of billing. Since bills must be paid within 30 days from the *bill* ***date,*** customers typically have, on average, less than 20 days to review very complicated bills. Verizon fails to explain how this time is sufficient to review bills and pursue disputes when Verizon is entitled to threaten discontinuance on 7 days notice. As described in detail in the Commenters' Petition to Reject, there are

[48] *Id* at Exhibit B-1.

numerous deficiencies in Verizon's billing. It takes significant time and manpower to identify all of these deficiencies and properly dispute them with Verizon.

E. Verizon Fails to Demonstrate a Need to Shorten the Notice Period for Responding to a Demand for a Security Deposit

In support of its 10-day notice for payment of security deposits or advance payments, Verizon cites the same reasons it provides in support of the termination and embargo notice period. For the reasons described above, such support is ineffectual. Interestingly, Verizon again points to the WorldCom bankruptcy stating that

> WorldCom's potential financial difficulties first came to light in December of 2001. Serious rumors that it would potentially be filing for bankruptcy started circulating at the end of June 2002, and hy July 21st it had tiled for bankruptcy.[49]

Again, Verizon does not indicate whether it ever sent a termination or embargo notice to WorldCom nor whether it even reviewed WorldCom's payments to determine whether a security deposit was appropriate. Verizon had ***6*** *months* from the time it became aware WorldCom was having financial difficulty until it filed for bankruptcy, and it appears Verizon did nothing.

Verizon fails to address, as requested by the Commission, why the shortened notice period is necessary to protect Verizon's interests and still allows adequate time for the customer to dispute the deposit and to access the necessary funds. There is no provision that allows customers to dispute Verizon's determination that a deposit is required. Instead, the customer is expected to produce the deposit within 10 days or face the draconian penalty of discontinuation of *all* services, including those provided under other tariffs or contract vehicles, on virtually no notice. There is no recourse available to the customer at all once Verizon has initiated the process.

49 ***Id*** **at** *B-5*.

VII. CONCLUSION

Clearly, the repressive and burdensome nature of the deposit requirements and shortened notice periods are far more damaging than they need to be to protect Verizon's interests. They are, in reality. punitive measures designed to punish CLECs. The proposed revisions *are,* in fact, a knee-jerk response to a billing and collection problem that is, to some degree, of Verizon's own making. Inasmuch as Verizon collects many of its charges ***in advance,*** it would seem to indicate a certain inefficiency, if not negligence, on Verizon's part if its uncollectibles have grown unwieldy, which they have not. Instead of cleaning its own house, Verizon proposes to "clean out" its customers by unilaterally exacting burdensome deposits. The simple fact is that Verizon prefers to draw down the resources of its customer/competitors. Moreover, the proposed provisions are much too broadly written, penalizing customers with good payment histories. The Commission should reject them as unjust and unreasonable.

For the foregoing reasons, Verizon's Direct Case does not demonstrate that it should be allowed to change the security deposit requirements for its carrier customers or to shorten its notice periods. Verizon is already adequately protected under the price cap regime and Verizon assumed additional risk of loss when it obtained pricing flexibility for interstate services. Verizon's proposed deposits requirement changes are simply modifications to its price cap plan in order to increase its earnings. Verizon has s h o w no reason why such an increase is warranted. Accordingly, Verizon's proposed tariff revisions should be rejected.

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Freedom Ring Communications, LLC d/b/a BayRing Communications

Dated: November 12, 2002

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Exhibit I

REVENUES, UNCOLLECTIBLES, RATE OF RETURN

Aggregate BOC incl. **GTE** ($000)

Year	Total Operating Revenues (Interstate) 1090(h)	Uncollectibles (Interstate) 1060(h)	Uncollectibles as % of TOR (Interstate)	Rate of Return (Interstate) 1920(h)	Uncollectibles Change YOY
1990	19,617,779	69,778	0.36%	12.84%	
1991	19,350,285	78,777	0.41%	12.08%	12.90%
1992	19,703,065	83,954	0.43%	12.97%	6.57%
1993	20,404,956	82,321	0.40%	13.49%	-1.95%
1994	21,182,227	106,098	0.50%	13.66%	28.88%
1995	21,773,231	103,570	0.48%	13.64%	-2.38%
1996	22,590,365	121,681	0.54%	14.77%	17.49%
1997	23,435,496	131,837	0.56%	15.36%	8.35%
1998	25,077,761	115,437	0.46%	15.98%	-12.44%
1999	26,535,208	138,073	0.52%	18.17%	19.61%
2000	28,222,750	146,983	0.52%	19.26%	6.45%
2001	30,123,598	271,432	0.90%	19.74%	84.67%

Source: ARMIS Report 43-01: Table I. Cost and Revenue Table

Exhibit 2

REVENUES, UNCOLLECTIBLES, RATE OF RETURN
Verizon-Includes GTE ($000)

Year	Total Operating Revenues (TOR) (Interstate) 1090(h)	Uncollectibles (Interstate) 1060(h)	Uncollectibles as % of TOR (Interstate)	Rate of Return Verizon * (Interstate)	Uncollectibles Change YOY
1990	8,301,562	31,097	0.37%	12.45%	
1991	8,299,098	34,939	0.42%	11.22%	12.35%
1992	8,491,367	42,812	0.50%	13.14%	22.53%
1993	8,648,924	45,171	0.52%	12.89%	5.51%
1994	8,871,493	55,281	0.62%	12.81%	22.38%
1995	9,141,335	58,250	0.64%	12.63%	5.37%
1996	9,405,801	47,447	0.50%	14.35%	-18.55%
1997	9,691,684	42,354	0.44%	16.51%	-10.73%
1998	10,312,928	42,242	0.41%	15.50%	-0.26%
1999	10,760,672	62,008	0.58%	17.40%	46.79%
2000	11,317,315	65,403	0.58%	17.24%	5.48%
2001	11,814,418	138,705	1.17%	17.08%	112.08%
TOTAL	115,056,597	665,709			
AVERAGE	9,588,050	55,476	0.58%	14.44%	18.45%

Source: ARMIS Report 43-01: Table I. Cost and Revenue Table
* Calculated from fields 1915 (h) (Net Return), and 1920 (h) (Average Net Investment) Combined

CERTIFICATE OF SERVICE

I hereby certify on this 13"'day of November, 2002, that copies of the foregoing Motion for Acceptance of Opposition to Direct Case, Docket No. WC 02-317, for US LEC Corp.; Level 3 Communications, LLC; Focal Communications Corporation; Pac-West Telecomm, Inc.; Business Telccom, Inc.; ATX Communications, Inc.; DSLnct Communications, LLC; US TelePacific Corp. d/b/a TelePacific Communications; and Freedom Ring Communications, LLC d/b/a BayRing Communications (collectively "CLEC Commenters"), were served via messenger or overnight mail** to the following:

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